Editor's note; 83 I.D. 533

EVELYN CHAMBERS

IBLA 76-597, 618 Decided November 4, 1976

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, requiring additional evidence before issuing oil and gas leases NM-27779, NM-A-27818 Texas, and NM-A-27819 Texas.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally

The signature of the offeror on a simultaneous oil and gas lease entry card may be affixed by means of a rubber stamp, if it is the intention of the offeror that it be his or her signature.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First Qualified Applicant

Where a rubber stamp constitutes an offeror's signature on a simultaneous oil and gas lease entry card, the Bureau of Land Management need not presume that the offeror rather than an agent stamped the card, and where no agent's statement has been submitted, BLM may take appropriate action to establish the circumstances under which the signature was stamped on the card.

3. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Words and Phrases

"Agent." The word "agent", as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include an employee who has no discretionary authority

and merely acts as the employer's amanuensis in affixing the employer's stamp on a simultaneous oil and gas lease offer entry card, even if it is done outside the actual physical presence of the employer. Any statement required by the Bureau of Land Management to establish the identity of the person who stamped the offeror's name on the card must allow the offeror to provide information to establish whether or not the person was an agent within the meaning of 43 CFR 3102.6-1; merely requiring the offeror to show the stamp was affixed by him or in his presence is not sufficient.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell and Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Evelyn Chambers appeals from separate decisions of the New Mexico State Office, Bureau of Land Management (BLM),

requiring her to submit certain affidavits in order to obtain issuance of oil and gas leases NM-27779, NM-A-27818 Texas, and NM-A-27819 Texas. Appellant's simultaneous entry cards for leases NM-27779 and NM-A-27819 Texas had been drawn first, and her simultaneous entry card for lease NM-A-27818 Texas had been drawn second, in the public drawing held by the New Mexico State Office on March 9, 1976. Pursuant to appellant's request, and because the same issue is involved in the three appeals, they have been consolidated for decision.

In all simultaneous oil and gas lease offerings each offeror is required to sign the back of the entry card. Appellant's signature was imprinted on the three entry cards by means of a rubber stamp. Because appellant's entry cards did not carry "original" signatures, the BLM State Office required appellant to execute, and have notarized, the following affidavit:

AFFIDAVIT

[] It is my intention that the rubber stamp signature placed on offer to lease _____ be my signature and I personally placed the facsimile signature on the card.

[] The facsimile signature was placed on the entry card, by someone else in my presence, with my permission.

_____
Signature of Offeror

[Notarized.]

Appellant's statement of reasons asserts that after becoming aware of this Board's decisions in Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971), and Louis Alford, 4 IBLA 277 (1972), which allowed signatures on simultaneous entry cards to be affixed by rubber stamp, she determined to use this method in order to save time. She asserts further that on June 17, 1974, she submitted to the New Mexico State Office by certified mail an affidavit verifying her intention to utilize a rubber stamp to sign simultaneous entry cards and indicating that such signatures are valid and have the same effect as her handwritten signature. The statement of reasons describes her normal business practice in filing the entry cards as follows: after determining, with the advice of a geologist, which parcels to submit offers on, she would direct one of her secretaries to type the proper information on the card and to affix her signature thereon with a rubber stamp.

Appellant discusses five bases for error in the BLM State Office decisions. First, appellant asserts that such an affidavit is not required by any statute, regulation or prior Departmental decision, nor did BLM cite any authority for this requirement. Second, appellant argues that she should not be deprived of a statutory right to a lease for a reason not clearly set out in the regulations prior to the drawing. Appellant's third argument is that her secretary was performing a non-discretionary act

in rubber-stamping the entry cards as an amanuensis and that no principal-agent relationship was involved. Fourth, appellant alleges in the alternative that she has adopted the signature as her own by her subsequent acts. As a final argument, appellant points out that this method of signing did not give her an unequal chance or unfair advantage in the drawing.

[1, 2] It is true, as appellant argues, that the signature of the offeror on a simultaneous oil and gas lease entry card may be affixed by means of a rubber stamp if it is the intention of the offeror that such be his or her signature. Robert C. Leary, 27 IBLA 296 (1976); Louis Alford, supra; Mary I. Arata, supra. 1/ However, her argument that verification of the offeror's intent concerning such a signature is not required by statute, regulation or decision fails to consider the responsibility of BLM to issue oil and gas leases only to the first qualified offeror. 30 U.S.C. § 226 (1970); 43 CFR Subpart 3102. If an oil and gas lease offer is signed by an attorney-in-fact or agent in behalf of the offeror, the qualification requirements direct that

1/ In signing the card, the applicant certifies as to his qualifications to hold oil and gas leases under the law, that he has not filed any other entry card for the parcel involved, that he is the sole party in interest, or if not, that the names of other parties in interest are listed below, and he agrees he will be bound to a lease on the appropriate form. The card warns that it is a crime under 18 U.S.C. § 1001 (1970) to make knowing and willful false, fictitious or fraudulent statements.

certain information concerning the attorney-in-fact or agent must be filed with BLM. 43 CFR 3102.6-1. If this information is not filed, the offer must be rejected. E.g., Southern Union Production 2 IBLA 379 (1975). The same requirement pertains where a facsimile signature is affixed on the offer by an attorney-in-fact or agent. Robert C. Leary, supra at 299.

The fact that an entry card is drawn in a simultaneous drawing does not preclude BLM from inquiring into the qualifications of the offeror. Robertson v. Udall, 349 F.2d 195 (D.C. Cir. 1965). Unlike a handwritten signature, a rubber-stamped one does not carry the presumption that it was personally executed by the offeror. Robert C. Leary, supra at 301. Therefore, BLM may take appropriate action to establish the circumstances under which the signature was stamped on the entry card in order to determine whether 43 CFR 3102.6-1 should have been complied with if the offeror did not imprint the stamp himself.

[3] The method chosen by the New Mexico State Office to ascertain the identity of the person who actually rubber-stamped the offeror's signature on the entry cards was the affidavit described above. Appellant has explained that she could not execute this affidavit because she may not always have been physically present when her signature was stamped on the entry cards by her secretary. She argues, however, that her secretary is not an agent within the meaning of 43 CFR 3102.6-1.

There is no definition of the word "agent" in the regulations regarding oil and gas lease offer filings. In a general context, and in the broadest meaning of the word, anyone who does anything at the behest of another may be considered an "agent" or as having an agency relationship. There are many particular meanings in a wide variety of relations. E.g., 2A Words and Phrases, "Agent" (1955).

We must look to the purposes and requirements of 43 CFR 3102.6-1 with regard to agents and attorneys-in-fact to determine what type of relationship is envisaged by that regulation. There are two primary requirements in the regulation. First, it requires evidence of the authority of the agent to sign the offer in behalf of the offeror. Second, it requires separate statements by the agent and offeror stating whether there is any agreement or understanding by which the agent has received, or is to receive, certain described interests in the lease. If the answer to the second requirement is affirmative, a copy of the agreement, or a description if oral, must be filed together with certain information concerning the agent's qualifications to hold interests in federal oil and gas leases. Thus, the purposes of the regulation are to establish that the person acting for another has actual authority to do so and to establish if the agent has or will have any interest in the lease to be issued. The latter

purpose is important to assure that such an agent does not file more than one drawing card in a drawing if he has an interest in the lease, and to establish that his acreage holdings do not exceed the statutory maximum lease interest holdings. Cf. Pan American Petroleum Corp. v. Udall, 352 F.2d 32 (10th Cir. 1965).

The requirements and purposes of the regulation suggest an agency relationship akin to many business and commercial transactions where generally the terms "principal" and "agent" denote a fiduciary relationship with the agent possessing certain authority to act for the principal. See 2A C.J.S. Agency § 4 (1972). An "agent" may be distinguished from an "employee" in such contexts on the basis of the agent having authority to exercise discretion with respect to the transactions whereas a mere employee is allowed no discretion. See 53 AM. JUR. 2d, Master and Servant, § 3 (1970); 2A C.J.S. Agency § 16 (1972). Thus, an employee, or servant, while being an agent in the broadest sense of that term, may generally be understood to have no authority to act with discretion -- only to perform manual or mechanical acts. Id.

This distinction is clearly demonstrated in cases where an employee affixed his employer's signature to a document. In such circumstances where the employee is only performing a

mechanical act at the direction of the employer, the employee is considered merely to be the "instrumentality" or "amanuensis" by which the employer is exercising the discretion in the transaction. The action is deemed that of the employer acting for himself. The employer's presence at the time of the "signing" is either deemed unnecessary, or the employer's presence is found to be constructive because his judgment was involved and exercised. See United Bonding Insurance Co. v. Banco Suizo-Panameno, S.A., 422 F.2d 1142, 1147 (5th Cir. 1970); State v. Hickman, 189 So. 2d 254, 258-59 (Fla. App. 1966); Ellis v. Mihelis, 60 Cal. 2d 206, 384 P.2d 7, 11, 32 Cal. Rptr. 415 (1963); Houston Oil Co. v. Biskamp, 99 S.W.2d 1007, 1010 (Tex. Civ. App. 1936); 80 C.J.S. Signatures § 6 (1972).

Where an employee, such as a secretary, acts in a purely mechanical capacity as an "amanuensis" with no authority to exercise discretion concerning the offer or lease, there is no question concerning the employee having authority to act in behalf of the offeror in affixing the signatures or sharing an interest in the lease. (Of course, if an employee were to receive an interest in the lease, rather than receiving a salary only, such an interest would have to be disclosed by the offeror in any event under 43 CFR 3102.7.)

We conclude that the word "agent" in 43 CFR 3102.6-1 does not embrace an employee who is acting merely as an amanuensis in affixing the employer's stamped signature on an oil and gas lease offer, even if the employer, when an individual, is not actually physically present when the stamp is imprinted on the offer form. We hold, therefore, that any affidavit, or statement, 2/ required by BLM as additional evidence on a rubber-stamped signature must allow the offeror to provide sufficient information for BLM to determine compliance with the regulations. 3/

To accomplish this, the statement form should provide for a third category whereby the offeror, if he did not personally use the stamp or was not in the actual physical presence of the person who affixed the stamp, is able to state the facts from which BLM may draw its own conclusions on whether the person affixing the stamp was an agent of the offeror within the meaning of 43 CFR 3102.6-1. Thus, the offeror would be able to

2/ It is not necessary that statements required as additional evidence be in the form of an affidavit. Any person who "knowingly and willfully" makes "false, fictitious or fraudulent statements or representations" in a matter "within the jurisdiction of any department or agency of the United States" is subject to criminal sanctions. 18 U.S.C. § 1001 (1970); 43 CFR 1821.3-1.

3/ To avoid confusion and misunderstanding regarding "constructive" presence, the form should be changed to make clear that the statement regarding "presence" refers to actual physical presence, since this is the meaning which most persons would understand.

state the business procedure followed and the relationship between himself and the person who affixed the signature. The form should emphasize that actual facts are required rather than legal conclusions.

As indicated, the affidavit required in this case provided for only two circumstances: that the offeror placed the facsimile signature on the card, or that it was placed on the card in his presence with his permission. We emphasize that the purpose of requiring additional evidence from a successful simultaneous oil and gas lease offeror is to determine that offeror's compliance with the appropriate regulations. The affidavit here, as written by BLM, does not accomplish this because actual physical presence may not be necessary in circumstances where the employee is acting as the employer's instrument or amanuensis for the purpose of imprinting a signature.

The facts explained by appellant's attorney suggest that appellant's secretary was acting only as an amanuensis in imprinting appellant's signature. Appellant's attorney has stated appellant is willing to execute an affidavit that the stamped signatures constituted her signatures when the cards were filed with the New Mexico State Office. Merely stating that the rubber-stamp constituted her signature is not sufficient, without further explanation. Because appellant did not personally sign the appeal, when

these cases are returned to the New Mexico State Office she should be allowed a further period of time in which to sign personally her statement of the facts explaining the procedure in filing and signing the offer and her relationship with the person affixing the stamp.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for further action consistent with this opinion.

_____
Joan B. Thompson
Administrative Judge

We concur:

_____
Anne Poindexter Lewis
Administrative Judge

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Douglas E. Henriques
Administrative Judge